

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRASSICA PROTECTION PRODUCTS LLC, : 1:07-CV-07844-SAS

Plaintiff, :

-against- :

CAUDILL SEED & WAREHOUSE CO., INC. :

Defendant. :
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**DECLARATION OF THOMAS P. O'BRIEN III
IN SUPPORT OF DEFENDANT CAUDILL SEED & WAREHOUSE CO., INC.'S REPLY
BRIEF IN SUPPORT OF ITS MOTION TO TRANSFER, STAY OR DISMISS**

I, Thomas P. O'Brien III, make the following declaration pursuant to 28 U.S.C. § 1746, and declare as follows:

1. I am a Member (partner) with the law firm Frost Brown Todd LLC, counsel for the Defendant Caudill Seed & Warehouse Co., Inc., (hereinafter "Caudill"), in the above captioned action.

2. I am admitted to practice before the Supreme Court of the Commonwealth of Kentucky, the Supreme Court of the United States, as well as the United States Courts of Appeals for the Fourth, Sixth, Seventh, Tenth and Federal Circuits. I am also admitted to practice before the United States District Courts for the Eastern District of Kentucky and the Western District of Kentucky. In addition, I served as a Judicial Law Clerk to the Honorable Frederick P. Stamp, Jr., United States District Judge, United States District Court for the Northern District of West Virginia from 1991 – 1993.

3. I have personally reviewed our files and I have personally researched the on-line court docket for the United States District Court for the Western District of Kentucky at

Louisville, in re *Caudill Seed & Warehouse Co., Inc. d/b/a Caudill Seed Co. v. Brassica Protection Products LLC*, Civil Action No. 3:07-CV-00464-JBC (“the Kentucky Action”). The Complaint for Declaratory Judgment was filed electronically with the Court on September 4, 2007, and assigned to Judge Jennifer B. Coffman. A copy of the Complaint is attached hereto as Exhibit 1.

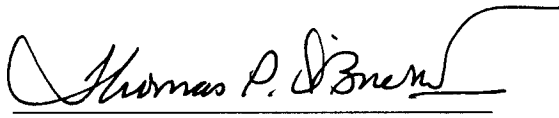
4. I have personally reviewed our files and I have personally researched the on-line court docket for the United States District Court for the Western District of Kentucky at Louisville, in the Kentucky Action. On September 6, 2007, the Court issued the Civil Summons for service of process. A copy of the Summons (and electronic court filing notification) is attached hereto as Exhibit 2.

5. I have personally reviewed our files and have determined that on September 11, 2007, our office transmitted the Civil Summons and Complaint, via certified mail, to the Kentucky Secretary of State to complete service upon Brassica Protection Products, LLC (“Brassica”). A copy of the September 11, 2007 transmittal letter (and the return receipt card) is attached hereto as Exhibit 3. On September 18, 2007, I received correspondence from the Kentucky Secretary of State advising that our request for service of process had been submitted with an incorrect fee (\$13.50 submitted, but only \$10.00 required), which resulted in the Kentucky Secretary of State being unable to process the Summons. A copy of the Kentucky Secretary of State’s deficiency notice is attached hereto as Exhibit 4. Thereupon, on September 18, 2007, I re-transmitted the Civil Summons and Complaint, via certified mail, and with the correct processing fee to the Kentucky Secretary of State. A copy of the September 18, 2007 transmittal letter is attached hereto as Exhibit 5.

6. I have personally reviewed our file and I have personally researched the on-line court docket for the Kentucky Action. On October 1, 2007, the Kentucky Secretary of State issued Notice that it had served the summons on September 20, 2007 upon Brassica, and that Brassica had received same on September 26, 2007, as evidenced by the certified mail return receipt. Thereafter, on October 9, 2007, the Kentucky Court issued an electronic court filing notification regarding the filing by the Kentucky Secretary of State of the Returned Executed Summons. A copy of these documents is attached hereto as Exhibit 6.

I declare under penalty of perjury the foregoing is true and correct, to the best of my knowledge, information and belief.

December 3, 2007
Date



Thomas P. O'Brien III